

Jessica Laroco

From: Paul Geraghty <pgeraghty@geraghtybonnano.com>
Sent: Thursday, February 1, 2024 9:18 AM
To: Jessica Laroco; Bill Mulholland
Subject: FW: 91 Boston Post Rd conceptual site plan review for affordable housing
Attachments: O'Connell Letter to EL IWA.pdf

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Jessica and Bill,

We have not applied for an inland wetlands permit yet as none is required at this stage of the process pursuant to Conn. Gen. Statute 8-30g. as Bill is aware from the Landmark cases and the WSP opinion letter, conceptual plans do not constitute a proposal for regulated activity. A letter from Town Counsel Edward O'Connell which is directly on point is attached as a reference and reminder. In addition, I would take issue of a Public Hearing on the Conceptual Site Plan approval you identified in your other email to me yesterday. Neither Conn. Gen. Statute 8-30g or the East Lyme Zoning Regulations provide for a Public Hearing on a Conceptual Site Plan. The East Lyme Zoning regulations provide for the ability to hold a Public Hearing only for Preliminary or Final Site Plans neither of which is being requested by my client's pending application. Please make this email and its attachment a part of the record in the pending application.

Bill, please call me asap to discuss.

Regards Paul.

Geraghty & Bonnano, LLC
38 Granite Street
New London, CT 06320
Ph 860-447-8077
Fax 860-447-9833
pgeraghty@geraghtybonnano.com

Jessica Laroco

From: Jessica Laroco
Sent: Wednesday, January 31, 2024 4:32 PM
To: 'Paul Geraghty'
Cc: Bill Mulholland
Subject: 91 Boston Post Rd conceptual site plan review for affordable housing

Hi Mr. Geraghty,
Have you applied for an Inland/ Wetlands Permit regarding the conceptual site plan at the above referenced address?
Thanks,
Jess

Jessica Laroco
Office Manager
Town of East Lyme
Land Use Dept.
108 Pennsylvania Ave
Niantic, CT. 06357
(860) 691-4114
Mon-Thurs 8AM- 5PM
Fri 8AM-11:30AM

WALLER, SMITH & PALMER, P.C.

COUNSELORS AT LAW

52 EUGENE O'NEILL DRIVE

P.O. BOX 88

NEW LONDON, CONNECTICUT 06320

TELEPHONE (860) 442-0367

FAX (860) 447-9915

EMAIL admin@wallersmithpalmer.com

WEBSITE www.wallersmithpalmer.com

FOUNDED IN 1885 AS WALLER & WALLER

OLD LYME OFFICE:
103 HALLS ROAD
P.O. BOX 506
OLD LYME, CONNECTICUT
06377
TELEPHONE (860) 434-8063
FAX (860) 434-9452

FRANK WALLER (1882 - 1947)
EDWARD SMITH (1906 - 1879)
EUGENE S. PALMER (1915 - 2000)

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VIRGINIA WOODS
ELIZABETH DIMAGGIO
ANDREW R. GELLEMME
JOSHUA H. FOLEY

OF COUNSEL:
WILLIAM W. MINER
ROBERT W. MARRION

ALSO ADMITTED IN MASSACHUSETTS
ALSO ADMITTED IN RHODE ISLAND
ALSO ADMITTED IN NEW YORK

PLEASE REPLY TO
NEW LONDON

August 4, 2005

Ms. Linda Dufresne
Conservation Officer
Town of East Lyme
P.O. Box 519
Niantic, CT 06357

Re Conservation Commission referral from Zoning Commission

Dear Ms Dufresne:

This is in response to your inquiry concerning the Conservation Commission's jurisdiction over the pending Landmark affordable housing application. It is our understanding that the application is for an amendment to the zoning regulations and a request for a zone change.

The Conservation Commission's Inland Wetlands and Watercourses regulations require applications to be submitted to the Conservation Commission for "[a]ny person wishing . . . to conduct or cause to be conducted a regulated activity upon an inland wetland, watercourse, or upland review area. . . ."¹


Thus, the threshold question is whether Landmark's affordable housing application proposes to conduct a regulated activity. If Landmark's application can be construed as proposing a regulated activity, then it would become necessary to determine whether Landmark's property contains an inland wetland, watercourse, or upland review area that would be impacted by the proposed activity.

¹ Additionally, certain applications are required by statute to be submitted to the Commission. General Statutes § 8-26, for instance, requires it for subdivision applications. Applications for zone changes and for amendments to the zoning regulations are not required by statute to be referred to the Commission.

"Regulated activity" is defined by the regulations as follows:

[A]ny operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution of such wetlands or watercourses, but shall not include the specified activities in section 22a-40 of the Connecticut General Statutes. Furthermore, any clearing, grubbing, grading, paving, excavating, filling, constructing, depositing or removal of material and discharging of storm water on the land within 100 feet measured horizontally from any wetland and 100 feet from the ordinary high water mark of any watercourse is a regulated activity.

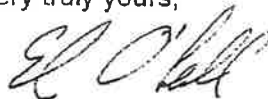
Notwithstanding the above definition of regulated activity, at its sole discretion, the Conservation Commission may rule that any other activity located therein or in any other non-wetland or non-watercourse area is a regulated activity if the Commission finds that such other activity is likely to have an impact on wetlands or watercourses.

 Clearly, Landmark's application anticipates the construction of a large number of housing units that would involve many of above listed activities. However, the application is not for a permit to do any type of construction or for formal approval of a site plan under the zoning regulations. It is our opinion that the accompanying plan is of the nature of a "conceptual site plan" as described in the affordable housing statutes. The application is for an amendment to the zoning regulations and a request for a zone change, neither of which fits the definition of a "regulated activity."

The regulations give the Commission the authority to "rule" that other activities than the ones listed above (e.g. construction, clearing, grading, etc.) are also "regulated activities" if it determines that such activities are likely to have an impact on the wetlands or watercourses. It is our opinion, however, that such other activities would have to be of a similar nature to the activities listed, i.e., *physical* activities.

We hope this provides some guidance for you to determine whether an Inland Wetlands and Watercourses application is required to accompany Landmark's affordable housing application.

Very truly yours,



Edward B. O'Connell, of
Waller, Smith & Palmer, P.C.

EBO: cc

Jessica Laroco

From: Jessica Laroco
Sent: Wednesday, January 31, 2024 3:50 PM
To: 'Paul Geraghty'
Cc: Bill Mulholland
Subject: 91 Boston Post Rd Conceptual site plan

Good afternoon Mr. Geraghty,

We are in receipt of your letter to Mr. Mulholland regarding the Public Hearing dates and the staff referrals for the above referenced address.

We have scheduled a Public Hearing for March 7, 2024, and we will notify you when the staff meeting will be held.

Please note, that we will require 6 additional copies of the documents you previously provided for distribution to the staff.

Let me know if you have any questions,

Jess

Jessica Laroco

Office Manager

Town of East Lyme

Land Use Dept.

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Niantic, CT. 06357

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